IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5207 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYENDRAKUMAR N BHATT - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR YOGESH S LAKHANI for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1 - 2.
MS MAMTA R VYAS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 28/06/2006

ORAL JUDGMENT

1. The short facts of the case are that the petitioner as well as respondent No.3, both, are

holding plots in one Shanti Niketan Cooperative Housing Society Limited situated at Rajkot. The petitioner is having the plot admeasuring 207.46 sq. mtr., whereas Respondent No.3 is having plot No.3, which was originally measured as 243.78 sq. mtr. The grievance of Respondent No.3 is that there is a shortage of the area admeasuring 20.43 sq. mtrs. It appears that initially Respondent No.3 had approached the City Survey Inquiry Officer for measurement and the orders were passed, against which the matter was carried before the District Collector and the District Collector, on 6.12.1994 by partly allowing the appeal, had remanded the matter to the City Survey Superintendent. It appears that thereafter the City Survey Superintendent, vide order dated 29.8.1995, rejected the application of Respondent No.3, because Civil Suit No.1326 of 1987 was already preferred by Respondent No.3 and in the said Civil Suit, order was passed by the Civil Court for appointing Court Commissioner and the measurement was already undertaken by the City Survey Superintendent and

the Commissioner Report was also submitted. The Respondent No.3 preferred the appeal against the order of the City Survey Superintendent before the Dy. Collector and the said appeal was allowed vide order dated 13.11.1995/18.12.1995 and it was ordered to make the measurement of Plot No.43. It appears that the matter was also carried before the District Collector and the District Collector vide order dated 12.6.1996 directed the City Survey Superintendent to measure the plot in presence of the Members of the Society and both the parties. It was also ordered that when the measurement takes place, the other concerned officer may also be intimated to remain present. Against the said order of the District Collector, the petitioner preferred revision before the State Government, which was initially not entertained, but subsequently in view of the order of this Court in Special Civil Application No.8490 of 1996 the revision was entertained and was directed to be decided within stipulated time. It appears that thereafter the State Government passed the

order on 3-6/7/1997, whereby the revision of the petitioner was dismissed and the order of the District Collector was confirmed. It is under these circumstances, the petitioner has approached this Court by preferring the present petition.

2. Heard Mr.Mehta, learned Counsel for Mr.Lakhani appearing for the petitioner, Ms.Vyas, learned Counsel for Respondent No.3 and Mr.Mengdey, learned AGP for the State Authorities.

3. The contention raised on behalf of the petitioner is that in the civil suit preferred by Respondent No.3 the order was already passed by the Civil Court appointing the Court Commissioner and the measurement is already undertaken and, therefore, the Collector ought not to have ordered for re-measurement of the plot. It has been submitted on behalf of the petitioner that earlier the District Collector had remanded the matter to the City Survey Superintendent for taking appropriate decision after taking into consideration the civil suit and the order passed by the Civil Court and

subsequently, the very District Collector has taken a different view and, therefore, it has been submitted that the subsequent order passed by the District Collector is in contravention to the earlier order passed by him. It has also been submitted on behalf of the petitioner that it is not open to the party to undertake two parallel proceedings for the very subject matter and, that too, after unreasonable period. Mr.Mehta, learned Counsel for the petitioner also submitted that in the Civil Court in the application Ex.89 was submitted for remeasurement by Respondent No.3, who is the plaintiff in the suit, however, the learned Civil Judge found that since for the measurement of the disputed land against the order of the District Collector, the Defendant who is the petitioner herein has preferred the petition and the petition is pending and the stay is operating against the measurement, the application cannot be granted and, therefore, the application has been rejected on 13.9.2002. Mr.Mehta, learned Counsel appearing for the

petitioner, during the course of hearing, has placed on record the xerox copy of the application Ex.89 and the orders passed by the Civil Court below the said application. He, therefore, submitted that the thing which cannot be done directly cannot be allowed indirectly in the present proceedings in as much as if this Court rejects the present petition, there may be the measurement of the land as ordered by the District Collector and subsequently the order of the Civil Court may be frustrated and, therefore, it has been submitted that this Court may not permit such an action on the part of Respondent No.3. It has been, therefore, submitted that the impugned orders passed by the Collector and its confirmation thereof by the State Government deserve to be quashed and set aside.

4. Ms.Vyas, learned Counsel as well as Mr.Mengdey, learned AGP have supported the orders passed by the lower authorities.

5. The first contention raised on behalf of the petitioner that the District Collector in the

subsequent order has taken a contrary view appears to have been not raised before the State Government and, therefore, as such in a petition under Article 227 of the Constitution of India, the petitioner cannot be permitted to raise such contention in normal circumstances. Even if such contention is considered for the sake of examination, then also there is no merit in the said petition, because in the earlier order the District Collector had remanded the matter to the City Survey Superintendent after taking into consideration all the aspects, including the order passed by the Civil Court and, therefore, it could not be said that any issue on the aspects of measurement or otherwise was concluded when the first order of remand was made by the District Collector. While passing the subsequent order in appeal it is observed by the District Collector that there is no bar operating of the Court for undertaking the measurement. Even the learned Counsel appearing for the petitioner has not been able to show any prohibitory order passed by the Civil Court

against the measurement or restraining the parties to undertake the measurement through revenue authority. Therefore, it cannot be said that in the subsequent order the District Collector has taken any contrary view and, therefore, the said contention of Mr.Mehta deserves to be rejected.

6. Merely because the civil suit is filed and if there is no prohibitory order of the Civil Court, restraining the revenue authority from exercising the power under the Bombay Land Revenue Code for measurement of the area of the Society, including the plot in question and if the application is made by the Member of the Society for measurement of the plot, it cannot be said that two parallel proceedings are undertaken as sought to canvassed on behalf of the petitioner. In the same manner, as contended by the petitioner, the application was made by Respondent No.3 before the Civil Court for measurement by submitting the application Ex.89, however, since the petition was pending before this Court and the interim stay was

granted the Civil Court has rejected the application and, therefore, when the Civil Court has rejected the application on account of the interim order passed by this Court and the pendency of the petition before this Court, it cannot be said that if this Court ultimately confirm the order passed by the District Court or the State Government for the measurement, the parties will be allowed to get the result indirectly, which was not permitted directly by the Civil Court. Therefore, both the contentions raised on behalf of the petitioner are meritless and deserve to be rejected.

7. Apart from the above, it deserves to be recorded that if the measurement is to be undertaken as ordered by the District Collector of the various plots of the Society, including the plot in question, no serious prejudice can be said to have been caused to the petitioner, because the measurement is to be undertaken of the area as available at site. Mr.Mehta, learned Counsel appearing for the petitioner, attempted to submit that if such an measurement is

undertaken, it may prejudice the rights of the parties in the pending civil suit, more particularly when the evidence is closed in the civil suit and the matter is for argument. In my view, the reliability or otherwise of the measurement, which may be undertaken is a different aspect than the actual measurement. It may be that for the valid reasons, the Civil Court may discard the evidence, but thereby it cannot be said that the rights of the parties in the pending Civil Suit would be prejudiced, if the measurement of the area of the plots of the society is undertaken as per the order of the Collector.

8. Apart from the above, the scope of judicial review in a petition under Article 227 of the Constitution of India arising from the orders passed by the lower authorities is very limited. It is well settled that unless any jurisdictional error is committed or the exercise of discretion is so perverse, which may seriously cause injustice to the rights of the parties, this Court would normally not interfere

in the decision of the lower authority. The perusal of the order passed by the District Collector and its confirmation thereof by the State Government does not show that any jurisdictional error is committed by the lower authorities, nor can it be said that by permitting measurement of the plots of the society in presence of the office bearers of the society, the officers of the Corporation and the affected parties, the discretion exercised is so perverse, which deserves interference by this Court in exercise of power under Article 227 of the Constitution of India.

9. In view of the above, the petition fails. Hence, the same is dismissed. Rule discharged. Considering the facts and circumstances, there shall be no order as to costs. It is made clear that none of the observations made in this order shall prejudice the rights of either side in the proceedings of Civil Suit No.1326 of 1987, pending in the Civil Court and the Civil Court will be at liberty to take independent view of the matter on the basis of the evidence,

which may be available before it and in accordance with law, without, in any manner, influenced by any of the observations made by this Court in the present judgement.

10. Mr.Mehta, learned Counsel for the petitioner, prays that the operation of the present judgement be suspended for some time so as to enable the petitioner to approach before the higher forum. Considering the facts and circumstances, it appears that even after the order, the measurement is to take some reasonable time and, therefore, the said prayer is not granted.

28.6.2006 **(Jayant Patel, J.)**

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